

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

**MARSHA LETO and
CARLO LETO,**

Plaintiffs,

v.

**CIVIL ACTION NO. 3:07-CV-79
(BAILEY)**

DAN RYAN BUILDERS,

Defendant.

**MEMORANDUM ORDER
GRANTING MOTION TO REMAND**

Pending before this Court is Plaintiffs' Motion to Remand to State Court (Doc. 5). This action was filed on May 8, 2007, in the Circuit Court of Berkeley County, West Virginia, seeking damages for alleged negligence in the construction of a railing, causing personal injuries. Process was served on the defendant on May 29, 2007, and this action was removed to this Court by the defendant on June 28, 2007 (Doc. 1).

The basis of the Motion to Remand is that while the plaintiffs were citizens at the time the cause of action arose, they have subsequently moved to Maryland and were citizens of Maryland at the time that the action was filed. Inasmuch as the defendant is also a citizen of Maryland, no diversity of citizenship jurisdiction exists.

Federal diversity jurisdiction depends upon the citizenship of the parties at the time the case is filed, not when the cause of action arose. ***Grupo Dataflux v. Atlas Global Group, L.P.***, 541 U.S. 567 (2004). In this case, the defendant has indicated to the Court that it does not contest the change in citizenship nor does it oppose the motion to remand.

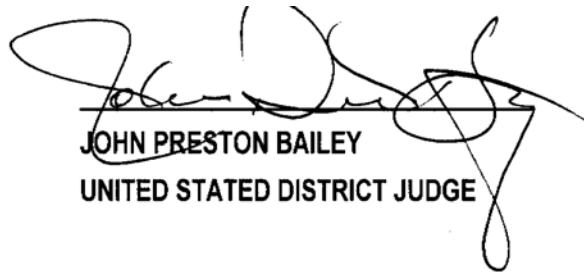
Based upon the foregoing, it is clear that the Plaintiffs' Motion to Remand to State Court (Doc. 5) should be, and the same hereby is, **GRANTED**.

This case is hereby **REMANDED** to the Circuit Court of Berkeley County, West Virginia, for all further proceedings.

It is so **ORDERED**.

The Clerk is hereby directed to transmit copies of this Order to counsel of record herein.

DATED: October 2, 2007.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE